



STATE OF MICHIGAN
DEPARTMENT OF EDUCATION
LANSING

RICK SNYDER
GOVERNOR

BRIAN J. WHISTON
STATE SUPERINTENDENT

April 14, 2017

Mr. Patrick Devlin, President
Detroit Community Schools Board of Directors
12675 Burt Road
Detroit, Michigan 48223

Re: Detroit Community Schools CP 16-1

Dear Mr. Devlin:

Enclosed is a copy of my Final Report and Decision upholding the state aid penalty levied against Detroit Community Schools for employing two individuals who were not properly certified. I am transmitting this Final Report and Decision to Phil Boone, Interim Director of the Office of State Aid and School Finance in the Department of Education, for implementation.

Sincerely,

Brian J. Whiston
State Superintendent

cc: Robert Dulin, Secretary, Detroit Community Schools Board of Directors
Phil Boone, Interim Director, Office of State Aid and School Finance
Leah Breen, Director, Office of Professional Preparation Services ✓

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Michigan Department of Education

FINAL REPORT AND DECISION
OF
THE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the matter of: Appeal by Detroit Community Schools
Certification Penalty
Docket No. CP 16-1

BACKGROUND FACTS

In a first level decision dated August 1, 2016, Leah Breen, director of the Office of Professional Preparation Services (OPPS) of the Michigan Department of Education (MDE) and Daniel M. Hanrahan, director of the MDE Office of State Aid and School Finance, determined that Detroit Community Schools, a public school academy, was employing two individuals who were not properly certified. They found that both Sharon McPhail and Echelle Jordan were illegally employed by Detroit Community Schools in that neither one was certified as a school administrator.¹ A state aid deduction was therefore assessed against Detroit Community Schools pursuant to MCL 388.1763(2) in the amount of the salaries paid to Ms. McPhail and Ms. Jordan beginning on October 16, 2015, and continuing during their illegal employment.²

On October 3, 2016, Detroit Community Schools filed a second level appeal with the Superintendent of Public Instruction, requesting reversal of the first level

¹ The MDE investigation that led to the August 1 determination involved Detroit Community Schools' employment of two additional persons. Ms. Breen and Mr. Hanrahan found that those two persons were not required to hold school administrator certification.

² As I informed Detroit Community Schools in a December 9, 2016 letter, monthly state aid deductions under MCL 388.1763(2) are held in abeyance during the pendency of this appeal but such deductions continue to accrue during any period of Ms. McPhail's or Ms. Jordan's out-of-compliance employment.

decision. Acting as designee of the Superintendent of Public Instruction, Robert J. Taylor, an MDE attorney, offered Detroit Community Schools the option to submit its appeal entirely in writing or to attend an in-person review conference during which Detroit Community Schools could present its position and MDE could respond. Detroit Community Schools chose to present its appeal entirely in writing.³

DISCUSSION

Section 163(2) of the State School Aid Act, MCL 388.1763(2), provides in part as follows.

Except as provided in the revised school code, a district^[4] or intermediate district employing educators^[5] not legally certificated or licensed shall have deducted the sum equal to the amount paid the educators for the period of noncertificated, unlicensed, or illegal employment.

The issue presented in this appeal is whether Detroit Community Schools employees Sharon McPhail and Echelle Jordan are legally required to hold school

³ In its appeal, Detroit Community Schools alleges that it was directed to file the appeal in writing. (Appeal, p 3). As noted, Detroit Community Schools rejected the option to appear in person before a designee of the Superintendent of Public Instruction. Detroit Community Schools further argues that it is entitled to a hearing "with the State Superintendent." There is no statutory right to a hearing in this matter. Therefore, the contested case provisions of the Administrative Procedures Act, MCL 24.271 et seq., do not apply. MCL 24.203(3) (contested case is a proceeding in which legal rights are required by law to be made by an agency after an opportunity for an evidentiary hearing); *McBride v Pontiac School District (On Remand)* 218 Mich App 113 (1996). Further, even if there were a statutory right to a hearing in the appeal of the assessment of a penalty under MCL 388.1763(2), there would be no hearing before the Superintendent of Public Instruction as hearing functions of the Department of Education have been transferred to the Michigan Administrative Hearing System. Executive Reorganization Order Nos. 2005-1 and 2011-4, MCL 445.2021 and 445.2030.

⁴ "District" includes a public school academy. MCL 388.1603(9).

⁵ As amended by 2015 PA 85, section 163 applies to all educators, including school administrators.

administrator certificates. Section 1246 of the Revised School Code, MCL

380.1246, addresses school administrator certification and provides as follows:

(1) A school district, public school academy, or intermediate school district shall not continue to employ a person as a superintendent, principal, assistant principal, or other person whose primary responsibility is administering instructional programs or as a chief business official unless the person meets 1 or more of the following requirements, as applicable:

(a) For a superintendent, principal, assistant principal, or other person whose primary responsibility is administering instructional programs, or a chief business official, who was employed as a school administrator in this state on or before the effective date of the amendatory act that added this subdivision^[6], has completed the continuing education requirements prescribed by rule under subsection (2).

(b) Subject to subsection (3), for a superintendent, principal, assistant principal, or other person whose primary responsibility is administering instructional programs and who is initially employed as a school administrator in this state after the effective date of the amendatory act that added this subdivision, possesses a valid Michigan school administrator's certificate issued under section 1536.^[7]

(2) The superintendent of public instruction shall promulgate rules establishing continuing education requirements as a condition for continued employment for persons described in subsection (1)(a). The rules shall prescribe a minimum amount of continuing education that shall be completed within 5 years after initial employment and shall be completed each subsequent 5-year period to meet the requirements of subsection (1)(a) for continued employment.

(3) A school district, public school academy, or intermediate school district may employ as a superintendent, principal, assistant principal, or other person whose primary responsibility is administering instructional programs a person who is enrolled in a program leading to certification as a school administrator under section 1536 not later than 6 months after he or

⁶ January 4, 2010.

⁷ MCL 380.1536.

she begins the employment. A person employed as a school administrator pursuant to this subsection has 3 years to meet the certification requirements of section 1536, or the school district, public school academy, or intermediate school district shall not continue to employ the person as a school administrator described in this subsection.

Thus, Detroit Community Schools is prohibited from employing individuals in certain administrative positions unless they satisfy either section 1246(1)(a) or section 1246(1)(b) of the Revised School Code, MCL 380.1246(1)(a) or 380.1246(1)(b), as applicable. Detroit Community Schools does not claim that Ms. McPhail or Ms. Jordan was employed as a school administrator in Michigan as of January 4, 2010. Subsection (1)(a) therefore does not apply. Pursuant to subsection (1)(b) and subject to subsection (3), a person employed as one of the identified school administrators who was initially employed as a school administrator in Michigan after January 4, 2010, must hold a valid school administrator certificate issued under MCL 380.1536. It is not disputed that neither Ms. McPhail nor Ms. Jordan holds or has ever held a valid Michigan school administrator certificate.

The cardinal rule in interpreting statutory language is to give effect to the intention of the legislature. *Melia v Michigan Employment Security Commission*, 346 Mich 544, 562 (1956); *State Bar of Michigan v Galloway*, 124 Mich App 271, 276 (1983), *aff'd* 422 Mich 188 (1985). Among the well-established rules of statutory construction that are applied in the course of discerning legislative intent is the principle that every word, sentence, and section of a statute must be given effect; no word is to be rendered surplusage or nugatory. *Id.* at 277; *Weems v Chrysler Corporation*, 448 Mich 679, 699 (1995), overruled in part on other grounds

in *Lesner v Liquid Disposal*, 466 Mich 95 (2002); *Altman v Meridian Township*, 439 Mich 623, 635 (1992). In the course of construing statutory language, courts have applied the rule of grammar known as the last antecedent rule. According to that rule, a modifying or restrictive word or clause in a statute is confined solely to the immediately preceding clause or last antecedent unless the statute requires a different interpretation. *Weems*, 448 Mich at 700; *Angelucci v Dart Properties, Inc.*, 301 Mich App 209, 215 (2013). The last antecedent is the last word, phrase, or clause that can be made an antecedent of certain language without impairing the meaning of the sentence that is being construed. *Hardway v Wayne County*, 494 Mich 423, 429, n 10 (2013). The Legislature is presumed to be aware of this and other rules of construction when it adopts statutory language. *Angelucci*, 301 Mich App at 215.

The *Angelucci* decision was issued by a 7-member Court of Appeals panel that was convened pursuant to MCR 7.215(J) to resolve a conflict in decisions involving the interpretation of section 1641 of the Revised Judicature Act, MCL 600.1641. That section identifies the proper venue of civil actions when more than one cause of action is pleaded in a complaint. The language at issue in *Angelucci* is found in subsection (2) of section 1641.

If more than 1 cause of action is pleaded in the complaint or added by amendment at any time during the action and *1 of the causes of action is based on tort or another legal theory seeking damages for personal injury, property damage, or wrongful death*, venue shall be determined under the rules applicable to actions in tort as provided in section 1629. (Emphasis added.)

The issue addressed by the Court was whether “seeking damages for personal injury, property damage, or wrongful death” refers to “tort” or only to

“another legal theory.” Applying the last antecedent rule, the Court ruled that “seeking damages for personal injury, property damage, or wrongful death” modifies only “another legal theory.” As observed by the Court, to construe subsection (2) as limited to tort-based claims that seek damages for personal injury, property damage, or wrongful death would fail to accord any significance to the word “tort.”

The analysis of the Court of Appeals in *Angelucci* provides meaningful guidance in the instant case. The statutory language at issue here is “employ a person as a superintendent, principal, assistant principal, or other person whose primary responsibility is administering instructional programs.” Applying the last antecedent rule, I find that “whose primary responsibility is administering instructional programs” modifies only “other person.” That is, the determination of whether a person employed as a superintendent, as a principal, or as an assistant principal is required to hold school administrator certification under MCL 380.1246(1)(b) does not require examination of whether the administration of instructional programs is the person’s primary responsibility. To construe the language as requiring a showing of primary responsibility for administering instructional programs for all named persons would give no effect to the words “as a superintendent, principal, assistant principal” and would violate the well-established rule of statutory construction that no word is to be rendered surplusage. This interpretation of the statutory language is reasonable and, I find, consistent with the legislature’s intent to require appropriate and adequate preparation of educators employed in positions of authority commonly understood as those of superintendent, principal, and assistant principal.

I therefore find that an individual who is employed as a superintendent, as a principal, or as an assistant principal and an individual whose primary responsibility is to administer instructional programs are required to hold school administrator certification under MCL 380.1246(1)(b).

The Revised School Code does not define the duties of a superintendent, principal, or assistant principal. By using the words "employ as a," however, it is clear that the legislature did not intend the certification requirement to depend on the precise title assigned to an individual. That is, the determination of whether certification is required depends not on the label assigned to an individual's position but on the nature of the position. If the duties assigned to an individual are those commonly understood to be those of a superintendent, principal, or assistant principal, school administrator certification is required. To construe the statutory language as requiring certification only for persons bearing the titles of superintendent, principal, and assistant principal would easily invite circumvention of the clear legislative intent by manipulation of employees' job titles. Indeed, Detroit Community Schools does not appear to disagree with this construction in that it argues that it is the function, not the title, of an employee that matters when there is a question about whether certification is required.

With these principles in mind, I first address Detroit Community Schools' argument as it relates to Ms. McPhail. According to Detroit Community Schools, Ms. McPhail is not primarily responsible for administering instructional programs and she is therefore not required to hold a school administrator certificate. As discussed above, the determination of whether Ms. McPhail is primarily responsible for administering instructional programs need not be reached if she is employed "as

a superintendent, principal, [or] assistant principal.” Based on the documentation presented by Detroit Community Schools, the sole relevant inquiry is whether she is employed “as a superintendent.”

According to Detroit Community Schools, Ms. McPhail was a member of the district’s board of directors when, on September 15, 2012, she took over as “CAO/Superintendent.” (Letter from Richard Robinson, Ph.D., president of Detroit Community Schools board of directors, to OPPS, June 10, 2016) (hereinafter June 10, 2016 letter)). As described by Dr. Robinson, Ms. McPhail “had primary responsibility [in 2012] for administration.” *Id.* Among the “more than 70 major problems” identified by Ms. McPhail at that time were “compliance failures,” unpaid bills, lack of computers, and uncertainty about the accuracy of test results. *Id.* Ms. McPhail “built a team” that resolved the problems. *Id.* She worked with Gail Snoddy, who was hired “to oversee academic programs and to coach staff.” *Id.* Ms. McPhail and Ms. Snoddy reviewed “employees’ performance as to all instructional practices.” *Id.* Because of the lack of a written curriculum, Ms. McPhail created the School Wide Academic Team (SWAT), which consists of the most experienced teachers on staff. The SWAT meets regularly with Ms. Snoddy to develop curriculum and instructional practices. *Id.*

According to the employment history summary provided by the district, Ms. McPhail was “Superintendent/CAO” from September 15, 2012, to March 27, 2014,⁸ when she became “Chief Administrative Officer.” (*Id.*, Tab 8).

⁸ According to annual education reports available on the district’s web site, Ms. McPhail’s title was both superintendent and chief administrative officer in the 2012-2013 and 2013-2014 school years.

At the June 27, 2013 meeting of the district's board of directors, Dr. Robinson (who was a member of the board) was appointed "Chief Administrative Officer delegating all authority to Superintendent." The superintendent at the time was Ms. McPhail. By resolution dated March 27, 2014, the board of directors accepted the resignation of Dr. Robinson as Chief Administrative Officer and appointed Ms. McPhail as Chief Administrative Officer. According to the resolution, the appointment of Ms. McPhail "shall become contemporaneous with her removal from the employ of [the district's] management company, MMI, Inc., and she shall become a direct employee of Detroit Community Schools." The resolution further stated that her salary as chief administrative officer "shall be equal to her compensation as Superintendent."

Currently, the authorizing authority for Detroit Community Schools is Bay Mills Community College. The charter contract between Bay Mills and Detroit Community Schools has an effective date of July 1, 2014. As required by sections 502(3)(f) and 503(6)(d) of the Revised School Code, MCL 380.502(3)(f) and 380.503(6)(d), the contract includes a description of staff responsibilities, including a description of the responsibilities of the district's superintendent, who is the sole identified staff member who reports directly to the district's board of directors. The contract does not identify a position entitled "chief administrative officer." As described in the contract:

The school Superintendent serves as the highest executive or administrator of the school district and reports directly to the school board. The Superintendent is responsible for ensuring that schools function within budget and provide quality education in a safe environment. At the direction of the school board, school superintendent draft [sic] policies that govern the

operation of all schools and range from hiring teacher [sic] to disciplining students. Superintendent sets goals for schools, such as improving test scores or developing a new curriculum in a subject area. The superintendent provides the administrative leadership to all school personnel in carrying out the goals and objectives of the District.

The duties and responsibilities of the superintendent that are set forth in the contract are the following.

- Conceptualizes the broad goals of the school system, translates goals into plans, plans an organization structure capable of accomplishing the goals, assesses the degree to which policies and practices are attained and plans responses to assessed need.
- Creates the administrative procedures necessary for implementing personnel and fiscal policies consistent with: system policies; assessed needs; and applicable laws, rules and regulations. Once developed, the Superintendent assures that administrative procedures are implemented appropriately.
- Assures that the system's goals are represented by the educational goals in a manner consistent with legal, fiscal, organizational and community demands. This responsibility involves organizing and implementing an appropriate instructional program, evaluating the program, communicating support system needs to the Board; maintaining appropriate working relationships with Board, staff, and community; and complying with the various demands placed on the school system.
- Assures that the system's goals are represented by infrastructure objectives pertaining to facilities, personnel, support services, and information management. The Superintendent assures that board goals are translated into plans for the infrastructure, that plans are implemented and information is collected, maintained and communicated in an effective manner.
- Keep the Board informed of the condition of the District' [sic] educational system; assure effective communication between the Board and the staff. Relay all communications by the Board regarding personnel to District employees and receive from all school personnel any communication directed to Board.

- Develop and recommend to the Board objectives of the educational system; see to the development of internal objectives, which support those of the Board.
- See to the development of specific administrative procedures and programs to implement the intent established by Board policies, directives and formal action.
- Maintain adequate records for the schools, including a system of financial accounts, business and property records, personnel records, school population and scholastic records.
- See to the execution of all decisions of the Board.
- Maintain adequate records for the schools, including a system of financial accounts, business and property records, personnel records, school population and scholastic records.^[9]
- Be directly responsible for news releases and/or other items of public interest emanating from all District employees, which pertain to education matters, policies, procedures, school related incidents or events. Approve media interviews of this nature with District employees.
- See that appropriate in-service training is conducted. Summon employees of the District to attend such regular and occasional meeting [sic] as are necessary to carry out the educational programs of the District.
- Responsible for the appointment, discipline or termination of employment of teaching and non-teaching personnel of the District.
- See to the development throughout the District of high standards of performance in educational achievement, use and development of personnel, public responsibility, and operating efficiency.
- File, or cause to be filed, all reports, requests and appropriations as required by various governing bodies and/or Board policies.

The contract provides that the qualifications of the superintendent include a minimum of a master's degree; experience in administration with a focus on restructuring, process improvement, and financial stability; the ability to serve as facilitator and leader of large groups; and knowledge of state and federal laws and regulations affecting the operations of the district.

⁹ This duty is included twice in the job description.

Exhibit 8¹⁰ is a copy of an August 28, 2014 resolution of the board of directors of Detroit Community Schools. The resolution provides as follows:

RESOLVED THAT that [sic] the Detroit Community Schools Board of Directors hereby amends the duties and responsibilities of Sharon McPhail, Esq. as Chief Administrative Officer as follows:

The Chief Administrative Officer is responsible for managing and supervising all activities of Detroit Community Schools including, but not limited to:

- Recruitment, hiring, evaluation and termination of staff
- Establishment of staff salary and work schedules
- School marketing and enrollment of students
- Approval of changes to the District & School Improvement Plans
- Approval and promulgation of standard operating procedures governing all aspects school [sic] operations
- Execution of contracts
- Signing and approving all checks and drafts on DCS bank accounts
- Execution of official documents on behalf of Board President
- Engagement of attorneys on as needed basis
- Modify and amend school calendar and hours of operation as needed
- Preparation of monthly & quarterly financial statements.

Schedule 7A of the charter contract between Bay Mills and Detroit Community Schools addresses the governance structure of the district.¹¹ That schedule was amended effective November 5, 2014. The amendments included the addition of the following paragraph.

¹⁰ Documents cited as "exhibits" in this decision are attached to Detroit Community Schools' written appeal submitted on October 3, 2016.

¹¹ By statute, the contract much include a description of the governance structure. MCL 380.502(3)(e)(i) and 380.503(6)(d).

The day to day operation of the Academy will be the responsibility of the Chief Administrative Officer, who will have the authority to operate the school and supervise the staff.

This paragraph was not changed when schedule 7A was again amended, effective April 28, 2016.

In an April 12, 2016 letter to me, Ms. McPhail referred to herself as a manager whose job responsibilities have included hiring the human resources director and dean of students. In a May 1, 2016 letter to me, the board of directors of Detroit Community Schools referred to Ms. McPhail as the district's "leader" and noted the "significant improvement in the overall learning environment as evidenced, among other things, by students' achievement levels." According to the letter, the board has partnered with Ms. McPhail "as she has skillfully navigated resource, organizational and political challenges" to turn the district around. As described by the board members, Ms. McPhail "has created and redesigned existing programs to meet the unique needs" of the district's students. She has "implemented a mastery approach to education for DCS students." According to the board members, "The mastery grading program is labor intensive, and Ms. McPhail has shown tremendous vision both in its conception and in its stewardship." Arguing that Ms. McPhail does not administer instructional programs and is therefore not required to be certified as a school administrator, the board members stated that, as chief administrative officer, she "is responsible for the overall governance of the school, while the oversight of the educational programs are [sic] under the supervision of the school's rigorous curriculum team." The board members continued, "With the help of the Board, and that of her leadership team,

principals and teachers, Ms. McPhail has established an inclusive, diverse educational community that works to meet the needs of the whole child.” They cited tutoring programs, the availability of a certified psychologist, and a staff member trained in art therapy, in addition to mentoring services and an affinity group for LGBT students. They also cited Ms. McPhail’s collaboration with the University of Michigan and Henry Ford Health System to provide services for children. They concluded by stating their support for Ms. McPhail and “the work she does day-to-day to educate and improve the lives of our students and their families.”

In a May 6, 2016 e-mail to Dr. Robinson, which was copied to OPPS, Ms. McPhail stated that her job duties as Superintendent were the same as her duties as Chief Administrative Officer. According to the June 10, 2016 letter to OPPS from Dr. Robinson, Ms. McPhail’s title is “at times” still “Superintendent.” In that letter, Dr. Robinson described how Ms. McPhail had recently hired a new high school principal. According to an August 26, 2016 letter to OPPS from Dr. Robinson, Ms. McPhail’s “role is akin to that of a General Manager of the District.”

In a September 8, 2016 e-mail to Dr. Robinson, which was copied to MDE, Ms. McPhail stated that much of her work for the district “relates to risk management and making certain that we are in compliance.” According to the e-mail, she holds “literally hundreds of meetings. . . every year to administer the school” and she “receive[s] reports from everyone, in the nature of being informed as to what is being done and what needs to be done in each department.” She further noted that principals advise her when they believe a teacher needs assistance, that she goes into classrooms to address students’ disruptive behavior,

that she reviews principals' recommendations for terminating employees, and that she meets regularly with all executive staff. In her words, "I have to know what is happening in the District and cannot leave that to others."

Ms. McPhail submitted a "declaration" "supplemental to the appeal." In that document, she emphasized that she does not "write curriculum" or evaluate the teaching ability of instructional personnel. She described her function as to manage the school and her daily job as "managing the safety, security and needs of the student population." In her words, "There is no function, other than instruction, in which I am not involved." She insisted that she is not trained to write curriculum, evaluate teachers, or monitor instruction, and that she has never performed those tasks at Detroit Community Schools. Instead, "What I have done and continue to do is to make sure that others do what they are being paid to do." She describes her duties as "all administrative, not instructional."

Recent district annual education reports have been submitted by Ms. McPhail. In her cover letters with those reports, she noted the district's goal to expand the SWAT, whose mission is described as including making recommendations to the principals and Chief Administrative Officer for improvements in the educational programs of the district.

In support of its appeal of the state aid deduction based on Ms. McPhail's salary, Detroit Community Schools submitted letters from several members of the staff. One letter was from Wendy Senkbeil, who has been the district's K-8 principal since the fall of 2013 and who took on the additional duties of district academic officer (or district academic lead) in September 2016. Ms. Senkbeil described her duties as including management, observation, and evaluation of the

K-8 teaching staff; analysis of data related to student academic progress and regularly providing results of that analysis to the chief administrative officer; and, in collaboration with the SWAT and Ms. Snoddy, curriculum design, review of curriculum implementation and instructional programs, and preparation of the district and school improvement plan. She meets with Ms. McPhail weekly to discuss administrative issues related to facilities and maintenance, staffing, compliance with legal regulations, finance, and district academic achievement. She provides monthly reports related to her job responsibilities to Ms. McPhail for transmittal to the board of directors. (Exhibit 7). Detroit Community Schools also submitted a letter from Robert Hooper, who has been the district's high school principal since April 2016. His responsibilities are similar to those of Ms. Senkbeil. He meets with Ms. McPhail weekly to discuss staffing concerns, compliance issues, the approval of financial transactions, the submission of monthly reports of academic progress to be delivered to the board of directors, and other matters. *Id.* Another letter submitted by Detroit Community Schools was from math teacher Dorothy Hardy, who stated that Ms. McPhail has not been involved in developing curriculum or evaluating teachers but that she has been responsible for "day-to-day activities and administrative tasks." *Id.* In addition, the district submitted a letter from Ms. Snoddy, who is the district's Title I program facilitator. She wrote that she has been actively involved in curriculum development at Detroit Community Schools since 2010. She confers regularly with Ms. McPhail to keep her abreast of the curriculum work. In her opinion, Ms. McPhail "demonstrates strong leadership skills and high expectations for all staff and students." (Exhibit 4).

Based on careful consideration of all of the documentation described above and of the arguments of Detroit Community Schools, I find that Ms. McPhail is employed as a superintendent by the district. By resolution of the district's governing board, she "is responsible for managing and supervising all activities of Detroit Community Schools." (Exhibit 8). Her enumerated duties (which are not all-inclusive) include the duty to approve changes to the district and school improvement plans; the duty to recruit, hire, evaluate, and terminate staff; and the duty to approve standard operating procedures governing all aspects of school operations. The district's contract with Bay Mills provides that she is responsible for the district's day-to-day operations and for supervising staff. Clearly, such duties are uniquely inherent in the role of a person employed as a school superintendent. There is no documentation that any other employee reports to the board of directors or that any other employee is accountable to the board for the overall performance of the district. My conclusion finds support in the Revised School Code, where the legislature has clearly indicated its understanding that "superintendent" and "chief administrator" are equivalent positions. See, e.g., MCL 380.1230, 380.1230d, 380.1249, 380.1249b, 380.1280f. See also section 2b(3) of the Uniform Budgeting and Accounting Act, MCL 141.422b(3), where "chief administrative officer" is defined as including both the superintendent of a local school district and the person who has general administrative control of a public school academy.¹²

¹² My conclusion is also supported by the acknowledgment of Dr. Robinson, during an August 29, 2016 telephone conversation with OPPS, that Ms. McPhail's responsibilities include the following responsibilities that are inherent in the position of a school district superintendent: administration of board policies; development, supervision, and operation

Contrary to Detroit Community Schools' argument, the fact that the responsibilities of others include the development of curriculum and the delivery of instruction does not alter the fact that Ms. McPhail, as any other superintendent, is ultimately responsible for management and supervision of all district activities. As is not uncommon among school superintendents, she does not personally deliver instruction, develop curriculum, evaluate teachers, or perform many other duties that are delegated to employees who report to her either directly or through others. She is ultimately responsible to the board for all aspects of management and supervision of the district.

For these reasons, I find that Ms. McPhail is employed as a superintendent within the meaning of MCL 380.1246(1)(b) and that she is therefore required to hold a valid Michigan school administrator certificate.¹³

MCL 380.1246(3) permits the employment of an uncertified person as a superintendent if the person enrolls in a school administrator certification program no later than six months after beginning the employment. According to the statute, a district shall not continue to employ a person under this exception if he or she does not meet certification requirements within three years.

of the school program and facilities; reporting directly to the board; attendance at board meetings; administrative decision-making necessary for the proper functioning of the district; preparation and submission of recommendations to the board; recruitment and retention of staff; supervision of staff; financial management; educational leadership; records management; and supervision of buildings, grounds, transportation, and school safety. He further acknowledged that Ms. McPhail is evaluated by the board, as are superintendents generally.

¹³ As noted above, as I interpret MCL 380.1246, it is unnecessary to make a separate finding that Ms. McPhail's primary responsibility is the administration of instructional programs. Even if such a finding were required, however, my conclusion would be the same. She was expressly responsible for the management and supervision of all activities of Detroit Community Schools. It cannot be reasonably disputed that primary among those activities are the district's instructional programs.

In his June 10, 2016 letter to OPPS, Dr. Robinson asserted that Saginaw Valley State University (SVSU), which was the authorizing authority for the district, insisted that Ms. McPhail register for an "administrative certification course" near the end of the 2012-2013 school year. He further asserted that Ms. McPhail registered for a certification course within six months of her September 15, 2012 start date as "CAO/Superintendent." According to documentation provided by Dr. Robinson, however, Ms. McPhail enrolled in one Saginaw Valley course that was scheduled to run from July 1, 2013, to August 17, 2013, and another Saginaw Valley course that was scheduled to run from August 26, 2013, to December 14, 2013, but she received no credit for either course. (June 10, 2016 letter, Tab 10). Detroit Community Schools submitted no documentation that Ms. McPhail ever "enrolled in a program leading to certification as a school administrator" as required by MCL 380.1246(3) or that she completed such a program within the three-year period described in the statute.

I therefore find that Ms. McPhail's employment was not authorized by the statutory exception to the certification requirement set forth in MCL 380.1246(3) and that MCL 388.1763(2) requires a state aid deduction in the amount of her salary.

Detroit Community Schools also disputes the determination that Ms. Jordan is required to hold a valid Michigan school administrator certificate. Ms. Jordan was not employed "as a superintendent, principal, [or] assistant principal" at the time in question. Whether a state aid deduction was properly assessed based on her lack of school administrator certification therefore depends on whether her primary responsibility was administering instructional programs.

In the course of the investigation of this matter, OPPS determined that, for purposes of MCL 380.1246, the administration of instructional programs “includes evaluation of the certification of instructional staff along areas of need” and “management of curriculum and executive decision over content, materials, delivery, or supports.” I find that this interpretation of the statutory language is consistent with the intent of the legislature to require school administrator certification, and thus adequate and appropriate preparation, of persons with decision-making authority over the execution of a district’s most vital function—i.e., the delivery of instructional programs. With this understanding of the statutory language in mind, I now turn to an examination of the available relevant documentation concerning Ms. Jordan’s employment during the period in question.

In a survey submitted to OPPS by Patricia Peoples (the district’s director of human resources) in the spring of 2016, Ms. Jordan was identified as having one work assignment (“instructional specialist”). According to Ms. Peoples, that assignment began on September 7, 2015.

Tab 8 attached to Dr. Robinson’s June 10, 2016 letter to OPPS was a document purporting to include the employment history of Ms. Jordan. According to that document, Ms. Jordan became the district’s curriculum lead in math and English in November 2014 and she continued to hold that position at the time of the letter. In a June 17, 2016 letter to Dr. Robinson, OPPS requested Ms. Jordan’s position description or job duties. Dr. Robinson responded by way of a letter dated July 6, 2016. According to that letter, Ms. Jordan’s position was “Supervisor

Curriculum – Math.”¹⁴ There was no mention of her previously asserted position as curriculum lead in English.

Attached to Dr. Robinson’s July 6 letter (Tab 1) was a document that he provided as a description of Ms. Jordan’s position. According to that document, “Supervisor Curriculum – Math” reports to the “Superintendent/(CAO).” The position is summarized as follows.

The Curriculum Supervisor has the responsibility of collecting, tabulating, and disseminating data from the instructional division. The general scope of responsibility is to provide district and building level support.

The duties and responsibilities of the position are detailed as follows.

- Work with building school improvement teams to select appropriate strategies and materials for use with students.
- Staff development
- Technical assistance
- Development of curriculum strategies.
- Improvement and implementation of curriculum
- Facilitate assessment strategies
- Facilitate use of instructional technology.
- Supervise the delivery of the math curriculum
- Serve as resource person for principals and teachers in the educational planning process.
- Serve as an advisor to school improvement teams and curriculum committees.
- Attend principal meetings, keeping administrators updated on issues related to the area of math.
- Serve on program evaluation committees.
- Maintain an effective and cooperative working relationship with administrators in other departments.

¹⁴ This position is not included in the description of staff responsibilities in the district’s contract with Bay Mills.

In his August 26, 2016 letter to OPPS, Dr. Robinson stated that, from October 2015 through June 2016, Ms. Jordan was the “academic lead in mathematics.” He further asserted that Ms. Jordan was, as of August 26, 2016, an administrative assistant to Ms. McPhail and a member of the SWAT “in mathematics only.” However, in its appeal, Detroit Community Schools described Ms. Jordan as a SWAT team member and curriculum lead in math and English. The district asserts that, in 2015-2016, she also taught 8th grade math and high school algebra. The district does not explain the discrepancies in the descriptions of Ms. Jordan’s position.¹⁵

Examining the job description provided by Dr. Robinson for Ms. Jordan, OPPS found that the following duties comported with the job description of a person whose primary responsibility is administering instructional programs: “select appropriate strategies and materials for use with students,” “development of curriculum strategies,” “improvement and implementation of curriculum,” and “supervise the delivery of the math curriculum.” (Appeal, Exhibit 2A). Based on this determination, a state aid penalty was assessed against Detroit Community Schools under MCL 388.1763(2) in the amount of Ms. Jordan’s salary during the time in question.

Based on a careful review of the available documentation, I do not find that, at the time in question, Ms. Jordan had primary responsibility for administering instructional programs within the meaning of MCL 380.1246(1)(b). The job description provided for her describes a position that is, in my view, more

¹⁵ The district provided no job description related to Ms. Jordan’s alleged position as English curriculum lead.

supportive than executive. The summary of her position expressly provides that her general responsibility is to provide support, and several of her duties and responsibilities are described in terms of working with others, facilitating, providing assistance, and serving as a resource person, advisor, and evaluation committee member. Although she is tasked with developing curriculum strategies, improving and implementing curriculum, and supervising the delivery of the math curriculum, there is no documentation that establishes that she has final decision-making or executive responsibility or authority in any of those areas. There is no indication, for example, that she evaluates math teachers or that she has the final say over either the content or the delivery of the curriculum.¹⁶ For these reasons, I find that she does not hold a position of primary responsibility for administering instructional programs within the meaning of MCL 380.1246(1)(b) and that she is not required by law to hold a school administrator certificate.¹⁷

Detroit Community Schools argues that a case involving Grand Rapids Public Schools lends support to its appeal. The case to which the district refers appears to be one that was ultimately decided by the Court of Appeals, *Grand Rapids Education Association v Grand Rapids Board of Education*, 170 Mich App 644 (1988). Detroit Community Schools urges me to exercise my discretion not to impose a penalty in this case just as the superintendent of public instruction did in that case. A fundamental weakness in this argument is that the circuit court

¹⁶ I emphasize that my determination that Ms. Jordan is not required to hold school administrator certification is strictly limited to the documentation available in this case. Each case involving MCL 388.1763(2) must be reviewed based on its unique facts.

¹⁷ Because I find that Ms. Jordan is not required by MCL 380.1246(1)(b) to hold a school administrator certificate, I will not address Detroit Community Schools' argument that she comes within the exception set forth in MCL 380.1246(3).

reversed the administrative decision in that case and the Court of Appeals affirmed the circuit court decision, finding that the Department of Education was bound by the plain words of MCL 388.1763 to impose a penalty when a district employed noncertified teachers. It is further evident that the facts in the present case do not include facts akin to those in the Grand Rapids case, where the superintendent of public instruction (albeit erroneously) found support in the State School Aid Act for declining to impose the section 163 penalty. Detroit Community Schools points to no statute that arguably supports its position as it relates to Ms. McPhail.

For the foregoing reasons, I find that a state aid penalty must be assessed against Detroit Community Schools in the amount of the salary paid to Ms. McPhail beginning on October 1, 2015, and continuing during her illegal employment.¹⁸

¹⁸ The first level decision identified October 16, 2015, as the first day of the penalty under MCL 388.1763(2). However, MCL 388.1763(2) was amended effective October 1, 2015, to require state aid adjustments based on the lack of school administrator certification. The deduction assessed in this matter based on Ms. McPhail's salary shall therefore be adjusted to reflect the statutory mandate.

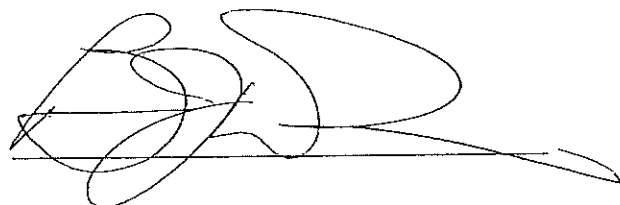
ORDER

Based on my review of this matter and for the above reasons, I affirm in part and reverse in part the first level decision of Leah Breen, director of the Office of Professional Preparation Services, and Daniel Hanrahan, director of the Office of State Aid and School Finance.

I order that a state aid deduction shall be assessed against Detroit Community Schools in the amount of the salary paid to Sharon McPhail during her illegal, noncertificated employment by Detroit Community Schools. The assessment shall be made beginning on October 1, 2015, and shall extend throughout Ms. McPhail's illegal, noncertificated employment by Detroit Community Schools.

I further order that a state aid deduction shall not be assessed against Detroit Community Schools based on the employment of Echelle Jordan during the period that is the subject of this matter.

This decision is being transmitted to the Office of Professional Preparation Services and the Office of State Aid and School Finance for implementation.

A handwritten signature in black ink, appearing to read 'Brian Whiston', written over a horizontal line.

Brian Whiston
Superintendent of Public Instruction

Dated: April 14, 2017

